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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961 No. 353

WILLIAM E. HILBERT, JOSEPH MAUER, C. W. CURTIS and HARRY M. HOWELL, (a) as members, and as such, as representatives of Division No. 25 of the Grand International Brotherhood of Locomotive Engineers; and (b) as representatives of the General Committee of Adjustment of the Indiana Division of the Pennsylvania Railroad of the Grand International Brotherhood of Locomotive Engineers; and (c) as members, and as such, as representatives of the Grand International Brotherhood of Locomotive Engineers,

Petitioners,

v.

THE PENNSYLVANIA RAILROAD COMPANY,

Respondents.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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WILLIAM E. HILBERT, JOSEPH MAUER, C. W. CURTIS and HARRY M. HOWELL, (a) as members, and as such, as representatives of Division No. 25 of the Grand International Brotherhood of Locomotive Engineers; and (b) as representatives of the General Committee of Adjustment of the Indiana Division of the Pennsylvania Railroad of the Grand International Brotherhood of Locomotive Engineers; and (c) as members, and as such, as representatives of the Grand International Brotherhood of Locomotive Engineers,
Petitioners,

v.

THE PENNSYLVANIA RAILROAD COMPANY,
Respondents.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

I.

QUESTIONS PRESENTED.

1. Whether the courts below erred in holding that the present case involves a dispute growing out of the interpretation or application of a railroad collectively bargained agreement, and is therefore a minor dispute as that term has been used in applying the Railway Labor Act.

2. Whether the courts below erred in holding that in a minor dispute there is no obligation imposed on carriers by the Railway Labor Act to refrain from taking an action challenged as an alleged violation of a collective agreement.

3. Whether the courts below erred in holding that the service by Respondent on the Brotherhood of Locomotive Engineers of a certain notice dated November 2, 1959, under Section 6 of the Railway Labor Act bore no relation to the minor dispute which arose in April 1960, and in holding that no statutory obligation arising from the service of such notice was violated in the present dispute.

4. Whether the courts below erred in holding that in the absence of such a statutory obligation under the Railway Labor Act there is no basis for the issuance of an injunction to restrain action by a carrier which has been challenged as a violation of existing collective agreements.

II.

STATEMENT OF THE CASE.

Facts.

Prior to the time the dispute involved in this case arose, Respondent operated certain passenger and freight services in the territory between Indianapolis, Indiana and East St. Louis, Illinois by the use of train crews, including engineers, assigned with their home terminal at Terre Haute, Indiana, which lies between Indianapolis and East St. Louis on Respondent's line of railroad. Freight service from Terre Haute eastward to Indianapolis and westward to East St. Louis was performed by "pools" consisting of a number of engineers and other train service personnel. Regularly scheduled passenger

service was performed in a similar manner so far as the home terminal was concerned. (P.A. 13.)[1]

Indianapolis has for many years been an established home terminal for road, train and engine crews as has Terre Haute. (Affidavit of J. J. Maher, par. 4; P.A. 39.)

Under existing collectively bargained agreements engineers in freight and passenger service are generally paid on a mileage basis, *i.e.*, at a fixed amount per mile of their individual runs. However, they receive a minimum allowance, generally referred to as a basic day, equivalent to the payment for 100 miles. The distance between Terre Haute and Indianapolis is approximately 78 miles. Engineers assigned to the eastward pool when they made a run between these two points were accordingly entitled to a payment of 100 miles even though they had actually run only 78.

Respondent determined that by arranging its freight and passenger service between Indianapolis and East St. Louis to be operated by engineers having their home terminal at Indianapolis, payment for the 22 miles not actually run would be eliminated and that the operation would be made more efficient by virtue of the elimination of a stop at Terre Haute for the purpose of changing crews. The mileage of the new runs amounted to approximately 260 miles, so that engineers assigned thereto would receive the equivalent of two-and-three-fifths basic days for each run but would receive pay only for miles actually run.

Respondent therefore proceeded to abolish the pools and the regular passenger assignments, all of which had home terminals at Terre Haute. New runs were advertised with the home terminal at Indianapolis to perform the same service, the freight service being performed by a pool operating from Indianapolis to East St. Louis and

[1] References marked P.A.—are to the "Appendix of Plaintiffs-Appellants" filed with the United States Court of Appeals for the Seventh Circuit—No. 13203, copies of which have been filed with this Court by Petitioners.

return and the passenger service being scheduled with Indianapolis as home terminal.

No prior consultation was had or required with the organization representing engineers, since this move represented a transfer of crews from one existing home terminal at Terre Haute to another existing home terminal at Indianapolis. Such changes had been made on numerous occasions in the past under existing agreements without prior negotiation with the organization representing engineers as well as those representing other train service employes. In several past cases when the organizations had attempted to require negotiations prior to such moves, decisions had consistently held that prior negotiation was not required. (Affidavit of J. J. Maher, paragraphs 5 through 7; P.A. 39-40; Supplemental Affidavit of J. J. Maher, P.A. 82.)

When notices and advertising bulletins were issued under date of April 18, 1960, the present suit resulted. (Complaint, Exhs. A through H; P.A. 19-25.) The temporary restraining order issued herein postponed, while it was in effect, the rearrangement of the runs in question.

Petitioners' Statement of Facts in their present brief (p. 13) is to the effect that Petitioners attempted to raise or list a dispute with Respondent concerning its proposed action but that Respondent refused to permit any dispute to be processed. The applicable agreement, and a supplemental agreement, provide an established method for the processing of grievances (see Rules 4-P-1, 7-A-1, 7-A-2 and 7-B-2 of the printed agreement; Affidavit of J. J. Maher, Appendix A: P.A. 42, and also Appendix E: P.A. 67). No attempt was made by Petitioners to progress the present dispute under the existing grievance procedures (Affidavit of J. J. Maher, par. 9; P.A. 40) although Petitioners have a right to do so as was found by the District Court and affirmed by the Court of Appeals (see Petitioners Brief pp. 45 and 41 respectively).

On November 9, 1959 prior to the occurrence of the present dispute, Respondent served on the Brotherhood of Locomotive Engineers, as well as on certain other organizations representing its employes of the crafts or classes of firemen, conductors, trainmen and switchmen, a notice under Section 6 of the Railway Labor Act proposing a general revision of the collectively bargained agreements governing such employes. This notice was served as part of a national movement by substantially all Class I carriers of the United States and was necessarily cast in general terms. (Affidavit of J. J. Maher, par. 10; P.A. 40.) These proposals have been referred to and are currently the subject of national handling before an especially created Presidential Commission. Both courts below found that the dispute raised by said Section 6 notice was totally unrelated to the dispute at issue in the case at bar.

Nature of the Case and Its Disposition.

Respondent does not disagree with the recital of the proceedings in the State Court and in the United States District Court set forth on pages 14 through 16 of Petitioners' brief.

However, Respondent deems it important to call attention in somewhat more detail to the allegations of the complaint.

The complaint alleged that Respondent's action was in violation of Rule 5-P-1 of the current collectively bargained agreement governing engineers employed by Respondent. Said rule was quoted in paragraph 21 of the Complaint (P.A. 13), and paragraph 26 of the Complaint (P.A. 16) alleged that Respondent's notices of April 18, 1960 which would have carried out the change in terminals of certain engineers from Terre Haute to Indianapolis, Indiana "were and are in violation of Rule 5-P-1 of the Agreements in effect between the parties,

and such are also in violation of the provisions of the Railway Labor Act." A violation of Rule 5-P-1 was also asserted with emphasis in the affidavit of plaintiff Hilbert (P.A. 87, especially paragraphs 2-6).

The prayer of the Complaint requested in paragraph (c) thereof a hearing "on the merits", and in paragraph (d) an award of damages in the amount of $500,000. (P.A. 17, 18.) Petitioners thus sought a determination that Respondent's actions were in violation of the existing collective agreement and asked damages for the alleged breach of contract as well as an injunction against it.

Petitioners also alleged a violation of Section 6 of the Railway Labor Act based on two separate contentions. First, it was alleged that defendant had served certain notices dated November 2, 1959 to change existing agreements between Respondent and its employes represented by the Brotherhood of Locomotive Engineers. (Complaint, pars. 15-19; P.A. 10-13.) Petitioners contended that Respondent's proposed action in re-assigning these engineers constituted an illegal attempt to change agreements affecting rates of pay, rules or working conditions. Secondly, Petitioners alleged a violation of Section 6 of the Act which was closely related to the alleged violation of Rule 5-P-1 as indicated in paragraph 26 of the Complaint quoted above.

III.

ARGUMENT.

1. Summary of argument.

Under Rule 19 of this Court the question here presented is whether the Court in its sound discretion should grant the petition for a writ of certiorari, and whether there exist in this case the "special and important reasons" which might lead the Court to do so.

Petitioners' brief in support of its petition asserts that in the present case the courts below have decided an important question of Federal law in the application of the Railway Labor Act, which question has not been but should be settled by this Court, and also contend at one point (pp. 23 to 24) that the Court of Appeals has rendered a decision in conflict with the opinion of this Court in *Order of Railroad Telegraphers, et al.* v. *Chicago & North Western Railway Company*, 362 U.S. 330, 80 S. Ct. 761 (1960), rehearing denied 326 U.S. 984.

Respondent submits that the decisions by the courts below were correct under settled Federal law and were in harmony with the terms of the Railway Labor Act and the decisions of this Court construing that Act; that there is adequate basis in the Act and clear and sufficient guidance in previous decisions of this Court for the decisions below; that the holding below is not in conflict with the *Telegraphers* case; and that consequently there is no necessity for further consideration of the case by this Court.

It is submitted that the courts below correctly held (1) that the present case involves a minor dispute as that term is used in the application of the Railway Labor Act; (2) and that the Railway Labor Act does not impose any duty on a carrier to refrain from an action which it has taken and which has given rise to a minor dispute; (3) that the existence of a separate dispute over proposed changes in an agreement, such as the dispute which arose as a result of Respondent's Section 6 Notice of November 2, 1959, was unrelated to the present dispute; and (4) that there was, therefore, no statutory basis for the injunction suit by Petitioners.

All these holdings are fully supported by the law as embodied in the Railway Labor Act, and the previous decisions of this Court are sufficiently clear to obviate any need for further decision at this time.

2. This was a minor dispute.

This Court in *Elgin, Joliet & Eastern Railway Company* v. *Burley*, 325 U.S. 711, 65 S. Ct. 1282 (1945), at pp. 723 to 724 of the Opinion, set forth the distinction between disputes which are to be considered as major or minor under the Railway Labor Act. The distinction there drawn between those disputes which involve an attempt to acquire rights for the future by changing the terms of existing agreements (major disputes) and those disputes which involve the assertion of rights claimed to have accrued in the past (minor disputes) has been subsequently recognized and applied on numerous occasions by this Court and by lower courts as well settled law.

This Court has recognized disputes arising under existing agreements as minor disputes in *Brotherhood of Railroad Trainmen* v. *Chicago River and Indiana Railway Company*, 353 U.S. 30, 77 S. Ct. 635 (1957), and in *Brotherhood of Locomotive Engineers* v. *Missouri-Kansas-Texas Railroad Company*, 363 U.S. 528, 80 S. Ct. 1326 (1960), rehearing denied 364 U.S. 854.

Numerous lower courts have applied the principles of the *E. J. & E.* case. *Baltimore and Ohio Railroad Company, et al.* v. *Transport Workers Union*, et al., 271 F. 2d 87 (2d Cir. 1959), reversed and remanded on other grounds 364 U.S. 278 (1960); *Norfolk & P.B.L. Railroad Company* v. *Brotherhood of Railroad Trainmen*, 248 F. 2d 34 (4th Cir. 1957), certiorari denied 355 U.S. 914 (1958); *In re Hudson and Manhattan Railroad Company*, 172 F. Supp. 329 (1959), affirmed 267 F. 2d 941 (2d Cir. 1959), certiorari denied 363 U.S. 843; *Louisville & Nashville Railroad Company* v. *Brown*, 252 F. 2d 145 (5th Cir. 1958), certiorari denied 355 U.S. 914; *Rutland Ry. Corp.* v. *Brotherhood of Locomotive Engineers*, 188 Fed. Supp. 72 (U.S. Dist. Ct. Vt. 1960); *Flight Engineers International Ass'n* v. *Western Airlines*, U.S. Dist. Ct. S. Dist. Calif., No. 362-61-PH April 14, 1961, reported unofficially 48 L.R.R.M. 2487, 43 Labor Cases par. 17064.

The present case essentially involves a contention that the present rights of engineers at Terre Haute have been violated. In the Complaint, Petitioners set forth and alleged a violation of Regulation 5-P-1 of the collective agreement and asked for a determination of the merits and money damages (Complaint, pars. 21, 26; P.A. 13, 16, 17-18). Several other disputes of the same character as the present one have been handled in the past by these parties as minor disputes under the grievance procedure. See the specific cases in the Affidavit of J. J. Maher (P.A. 43, 45, 48, 60-61, 62-66).

There can be no doubt that the decision by the lower courts that the present dispute constituted a minor dispute was in accordance with settled Federal law as enunciated in decisions of this Court and as applied in numerous decisions of other lower courts.

3. In a minor dispute, the Railway Labor Act does not impose an obligation on a carrier to refrain from its action which gave rise to the dispute.

The provisions of the Railway Labor Act dealing with the handling of minor disputes clearly do not impose any duty on carriers to refrain from a challenged action, *i. e.*, to maintain the status quo. They are Section 2, General Purposes (5); Section 2, First, Sixth; and Section 3, First (i), 45 U.S.C.A. Secs. 152, 153 (Petitioners' Brief, Appendix E, pp. 48-50).

Section 2, First, of the Railway Labor Act imposes the obligation on employees, as well as carriers, to make every effort to settle all disputes, including those arising out of the application or interpretation of existing collective agreements.

Specifically, with respect to such minor disputes the Act first requires, in Section 2, Second and Sixth, that union representatives and carriers "consider in conference" or "confer" with respect to such dispute. Section 2, Sixth provides that the statutory duty to confer does not

"supercede the provisions of any agreements (as to conferences) then in effect." If adjustment of the dispute in conference does not result, Section 3 of the Act (45 U.S. C.A. Section 153), becomes operative. This section establishes the National Railroad Adjustment Board to deal with minor disputes. The jurisdiction of the Board as to the types of disputes it handles is set forth in Section 3, First (i) of the Act, which provides that minor disputes shall be handled up to the chief operating officer of the carrier designated to handle such disputes and if adjustment is not reached, the dispute may be referred to the National Railroad Adjustment Board.

None of these Sections imposes any legal obligation on carriers to refrain from action or to reverse an action which has been taken which its employes have challenged as a violation of accrued rights. At most these sections only impose a duty to "confer" with respect to such disputes, and to handle them in the usual manner, with final reference, if they are not settled, to the National Railroad Adjustment Board for what amounts to compulsory arbitration. *Brotherhood of Railroad Trainmen* v. *Chicago River and Indiana Railway Company*, *supra*, p. 8, at page 39 of the opinion.

Petitioners' contention repeated with emphasis in Part C of its present brief, that Respondent refused to negotiate with respect to the present dispute, is misleading and erroneous. Respondent took the position that it was not required under the collective agreement to negotiate prior to making the changes in its operation, but it has never refused to confer with respect to the resulting grievances. The District Court found that Petitioners had not presented any grievances or followed the grievance procedure but instead commenced the present action. Respondent's position is and has been that there is a grievance procedure available under the contract which Petitioners have failed to follow. Affidavit of J. J. Maher, paragraphs 8 and 9, and Attachment E thereto (P.A. 40, 67-69).

Of course, even if a carrier should refuse to confer with respect to a grievance the proper remedy under the Railway Labor Act would not be to issue an injunction requiring it to annul the action which had given rise to the grievance, but would be an injunction requiring it to confer in good faith on the grievance and to handle it in the usual manner as required by the Act. Compare *Virginia Railway Co.* v. *System Federation No. 40*, 300 U.S. 515, 57 S. Ct. 592 (1937), where a carrier was enjoined to treat with the duly designated representatives of its employes.

Both courts below found correctly that Petitioners did not follow the grievance procedure but instead sought an injunction asserting a violation of the Railway Labor Act. In addition to finding no statutory basis for such an injunction the Court of Appeals suggested that such an injunction in any event should be refused in view of the *per curiam* opinion of this Court in *Manion* v. *Kansas City Terminal Ry. Co.*, 353 U.S. 927, 77 S. Ct. 706 (1957).

Decisions of this Court have clearly indicated that in a minor dispute situation no statutory obligation to maintain the status quo exists. This conclusion is implicit in the holding in *Order of Railway Conductors* v. *Pitney*, 326 U.S. 561, 66 S. Ct. 322 (1946). In this case the Order of Railway Conductors sought an injunction against the Trustees of a railroad to prevent the assignment of certain work of operating trains within yard limits to conductors represented by the Brotherhood of Railroad Trainmen. It was alleged that such action would involve a violation of existing agreements with the Order of Railway Conductors, as representative of the road conductors who had previously manned the trains in question. The Supreme Court held in that case that the injunction should not issue to prevent the proposed action since the question of whether the agreement had been violated was referable to the National Railroad Adjustment Board.[2]

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[2] The *Pitney* case of course was a forerunner of the later cases holding that state or federal courts have no primary jurisdiction to decide disputes arising under railroad collective agreements. *Slocum* v. *Delaware Lackawanna & Western R. Co.* 339 U.S. 239, 70 S. Ct. 577 (1950); *Order of Railway Conductors* v. *Southern Ry.*, 339 U.S. 255, 70 S. Ct. 585 (1950); *Pennsylvania R. Co.* v. *Day*, 360 U.S. 548; 79 S. Ct. 1322 (1959).

It is of interest to note that the single dissenter in the *Pitney* case, Justice Rutledge, dissented on the ground that the carrier should have been required to maintain the status quo while the Adjustment Board was considering the question of alleged contract violations. The majority of this Court apparently considered and rejected the possibility that a statutory obilgation to maintain the status quo existed in the case of a minor dispute.

The same conclusion necessarily follows from the holding of this Court in *Brotherhood of Locomotive Engineers v. Missouri-Kansas-Texas Railroad Company, supra,* p. 8. In that case the Court held that where a union threatened a strike over a minor dispute the strike could be enjoined but that a District Court could impose conditions on the injunction which might require the railroad to maintain the status quo. It is significant, however, that at no time did the Court suggest that the Railway Labor Act imposed any obligation on carriers to maintain the status quo. Rather the *M-K-T* case was decided on general equitable principles which applied in the exercise of the Court's equitable jurisdiction to restrain the strike. If the obligation contended for by Petitioners in fact existed the Court in the *M-K-T* case would presumably have held that such conditions must be imposed in every minor dispute situation.

The absence of a statutory obligation to maintain the status quo has been recognized in lower court decisions. In *In re Hudson and Manhattan Railway Company,* 172 F. Supp. 329, the District Court denied a cross-motion of the defendant unions to have the status quo maintained pending decision of the National Railroad Adjustment Board. Its decision was affirmed at 267 F. 2d 941 and certiorari was denied at 363 U.S. 843. See also *Pennsyvania Railroad Company* v. *Transport Workers Union,* 178 F. Supp. 53 (1959); *Flight Engineers International Association v. Western Airlines, supra,* p. 8.

In addition, the Court of Appeals of New York refused in *Brennan* v. *Delaware, Lackawanna & Western Railroad Company*, 303 N.Y. 411, 103 N.E. 2d 532 (1952), to issue an injunction restraining an alleged violation of a collective agreement. Certiorari was denied in this case at 343 U.S. 977 (1952).

4. The dispute created by Respondents' Section 6 notice of November 2, 1959 has no relation to this case.

Both courts below found that the fact that the Respondents, acting under Section 6 of the Railway Labor Act, served on the Brotherhood of Locomotive Engineers a general notice for revision of the agreements covering the employment of engineers, including certain proposals as to changes in home terminals, had no relevance to the present dispute, which did not arise until April of 1960. The Section 6 notices in question were served incident to a national movement now under way for a general revision of operating employes collectively bargained agreements (Affidavit of J. J. Maher, paragraph 10 and Appendix F) (P.A. 40-41, 70-81, especially page 78).

By constant reference to this Section 6 notice, which admittedly created a major dispute under Section 6 of the Act, Petitioners attempt to give the impression that the obligations of Section 6 were somehow carried over to the minor dispute which arose approximately 6 months later (see Section A of Petitioner's Argument, pages 17 through 21).

Section 6 of the Act, 45 U.S.C.A. Sec. 156 (Petitioners Brief, Appendix E, p. 52) of course, provides that where a written notice of "an intended change in agreements affecting rate of pay, rules or working conditions" has been served, and while the major dispute procedures of the Act are being followed, "rates of pay, rules or working conditions shall not be altered by the carrier." Section 2, Seventh 45 U.S.C.A. Sec. 152 (Petitioners' Brief,

Appendix E, p. 50), makes it clear that this provision refers to proposed changes in rates of pay, rules or working conditions of employees "as a class, as embodied in agreements." Both courts below recognized what should be obvious, namely that the obligation of Section 6 to maintain existing rates of pay, rules and working conditions during the period that new or changed ones are being negotiated, can only mean the continued application of existing agreements, and that in the course of such application minor disputes may arise. This is precisely what occurred here. However, the existence of an outstanding Section 6 notice cannot properly have the legal result that a carrier cannot take any action under an existing agreement which its employes choose to challenge. If this were the law it is perfectly obvious that the administration of existing agreements would be completely paralyzed during any period of time when a Section 6 notice was outstanding.

It is submitted that the findings of the lower courts that there was no relation between the Section 6 notice of November 2, 1959 and the dispute which arose in April of 1960 do not present any unusual or unsettled Federal question. Rather, they are in the nature of factual findings that there were in existence two disputes which were completely separate. Each of these disputes is subject to different statutory treatment as has been established in numerous cases. The principles governing each type of dispute are clear and no necessity exists for this Court to grant certiorari in order to review what is essentially a factual finding by the lower courts as to the relationship of the two disputes. Compare *Rutland Ry. Corp.* v. *Brotherhood of Locomotive Engineers, supra,* p. 8.

Petitioner asserts a conflict between the decision of the Court of Appeals and the decision of this Court in *Order of Railroad Telegraphers* v. *Chicago & Northwestern Railroad Company,* 362 U.S. 330, 80 S. Ct. 761 (1960), rehearing denied 326 U.S. 934, asserting with emphasis,

but with inaccurate paraphrase, that the *Telegraphers* case held that "it is impossible to classify a major change affecting jobs, as a minor dispute." (Petitioner's brief, page 23.)

Respondent submits that there is no confusion or contradiction between the two cases. The question in the *Telegraphers* case was whether the organization, after mediation proceedings had been completed, could lawfully strike to force acceptance of a demand served on the carrier under Section 6 of the Act that existing agreements be changed to prevent the carrier from abolishing jobs without prior agreement of the organization. The Court held that such a demand was a proper subject for collective bargaining, and that the service of a notice embodying it created a major dispute, it being in the language of the Court "a dispute relating to a major change, affecting jobs, in an existing collective bargaining agreement." 326 U.S. 330, 341.

The Court of Appeals here clearly and correctly held that the present case was not such a major dispute, that there was no relevant Section 6 notice involved, and that the assertion of the Petitioners here was essentially the assertion of an accrued or vested right. Therefore, the decision of the Court of Appeals was not in the field involved in the *Telegraphers* case and its decision is not in conflict with this Court's decision in that case.

5. There is no statutory basis for the issuance of an injunction.

It is submitted that since the courts below correctly applied clearly established principles in determining that this case involved a minor dispute and that no statutory obligation to maintain the status quo existed, there is no unusual principle of Federal law involved in the conclusion of the courts that no injunction could properly issue.

The Court of Appeals correctly followed established principles in holding that Federal courts generally are barred by the Norris-LaGuardia Act from issuing injunctions in a labor dispute, unless necessary to vindicate the specific provisions of the Railway Labor Act (Petitioners Brief pp. 37-38). These principles have been established in previous decisions of this Court dealing with the relationship between the Norris-LaGuardia Act and the Railway Labor Act. *Virginian Railway Company* v. *System Federation No. 40,* 300 U.S. 515, 57 S. Ct. 592 (1937); *Brotherhood of Railroad Trainmen* v. *Chicago River and Indiana Railroad Company, supra* p. 8; *Order of Railway Telegraphers* v. *Chicago and Northwestern Railroad Company, supra* p. 7.

In the absence of any provisions of the Railway Labor Act specifically requiring Respondent to maintain the status quo, there can be no basis for the issuance of an injunction under the facts here presented.

It is therefore respectfully submitted that this case is not a proper one for review by certiorari in this Court, and that the Petition for a Writ of Certiorari should be denied.

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